

§ 53.162 Abatements.

For regulations under section 6404 of the Code of general application in respect of abatements of assessments to tax, see 27 CFR 70.125 (Procedure and Administration).

§§ 53.163–53.170 [Reserved]**§ 53.171 Claims for credit or refund of overpayments of manufacturers taxes.**

Any claims for credit or refund of an overpayment of a tax imposed by chapter 32 of the Code shall be made in accordance with the applicable provisions of this subpart and the applicable provisions of 27 CFR 70.123 (Procedure and Administration). A claim on ATF Form 2635 (5620.8) is not required in the case of a claim for credit, but the amount of the credit shall be claimed by entering that amount as a credit on a return of tax under this subpart filed by the person making the claim. In this regard, see § 53.185.

§ 53.172 Credit or refund of manufacturers tax under chapter 32.

(a) *Overpayment not described in section 6416(b)(2) of the Code*—(1) *Claims included.* This paragraph applies only to claims for credit or refund of an overpayment of manufacturers tax imposed by Chapter 32. It does not apply, however, to a claim for credit or refund on any overpayment described in paragraph (b) of this section which arises by reason of the application of section 6416(b)(2) of the Code.

(2) *Supporting evidence required.* No credit or refund of any overpayment to which this paragraph (a) applies shall be allowed unless the person who paid the tax submits with the claim a written consent of the ultimate purchaser to the allowance of the credit or refund, or submits with the claim a statement, supported by sufficient available evidence, asserting that:

(i) The person has neither included the tax in the price of the article with respect to which it was imposed nor collected the amount of the tax from a vendee, and identifying the nature of the evidence available to establish these facts, or

(ii) The person has repaid the amount of the tax to the ultimate purchaser of the article.

(3) *Ultimate purchaser*—(i) *General rule.* The term “ultimate purchaser”, as used in paragraph (a)(2) of this section, means the person who purchased the article for consumption, or for use in the manufacture of other articles and not for resale in the form in which purchased.

(ii) *Special rule under section 6416(a)(3)—(A) Conditions to be met.* If tax under chapter 32 of the Code is paid in respect of an article and the appropriate ATF officer determines that the article is not subject to tax under chapter 32, the term “ultimate purchaser”, as used in paragraph (a)(2) of this section, includes any wholesaler, jobber, distributor, or retailer who, on the 15th day after the date of the determination holds for sale any such article with respect to which tax has been paid, if the claim for credit or refund of the overpayment in respect of the articles held for sale by wholesaler, jobber, distributor, or retailer is filed on or before the date on which the person who paid the tax is required to file a return for the period ending with the first calendar quarter which begins more than 60 days after the date of the determination by the appropriate ATF officer.

(B) *Supporting statement.* A claim for credit or refund of an overpayment of tax in respect of an article as to which a wholesaler, jobber, distributor, or retailer is the ultimate purchaser, as provided in this paragraph (a)(3)(ii), must be supported by a statement that the person filing the claim has a statement, by each wholesaler, jobber, distributor, or retailer whose articles are covered by the claim, showing total inventory, by model number and quantity, of all such articles purchased tax-paid and held for sale as of 12:01 a.m. of the 15th day after the date of the determination by the appropriate ATF officer that the article is not subject to tax under chapter 32 of the Code.

(C) *Inventory requirement.* The inventory shall not include any such article, title to which, or possession of which, has previously been transferred to any person for purposes of consumption unless the entire purchase price was repaid to the person or credited to the

person's account and the sale was rescinded or any such article purchased by the wholesaler, jobber, distributor, or retailer as a component part of, or on or in connection with, another article. An article in transit at the first moment of the 15th day after the date of the determination is regarded as being held by the person to whom it was shipped, except that if title to the article does not pass until delivered to the person the article is deemed to be held by the shipper.

(b) *Overpayments described in section 6416(b)(2) of the Code*—(1) *Claims included*. This paragraph applies only to claims for credit or refund of amounts paid as tax under chapter 32 of the Code that are determined to be overpayments by reason of section 6416(b)(2) of the Code (relating to tax payments in respect of certain uses, sales, or resales of a taxable article).

(2) *Supporting evidence required*. No credit or refund of an overpayment to which this paragraph (b) applies shall be allowed unless the person who paid the tax submits with the claim a statement, supported by sufficient available evidence, asserting that:

(i) The person neither included the tax in the price of the article with respect to which it was imposed nor collected the amount of the tax from a vendee, and identifying the nature of the evidence available to establish these facts, or

(ii) The person repaid, or agreed to repay, the amount of the tax to the ultimate vendor of the article, or

(iii) The person has secured, and will submit upon request of the appropriate ATF officer, the written consent of the ultimate vendor to the allowance of the credit or refund.

(3) *Ultimate vendor—General rule*. The term *ultimate vendor*, as used in paragraph (b)(2) of this section, means the seller making the sale which gives rise to the overpayment or which last precedes the exportation or use which has given rise to the overpayment.

(c) *Overpayments not included*. This section does not apply to any overpayment determined under section 6416(b)(1) of the Code (relating to price readjustments), section 6416(b)(3)(A) of the Code (relating to certain cases in which refund or credit is allowable to

the manufacturer who uses, in the further manufacture of a second article, a taxable article purchased by the manufacturer taxpaid), or section 6416(b)(5) of the Code (relating to the return to the seller of certain installment accounts which the seller had previously sold). In this regard, see §§ 53.173, 53.180, and 53.183.

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF-312, 56 FR 31084, July 9, 1991]

§ 53.173 Price readjustments causing overpayments of manufacturers tax.

In the case of any payment of tax under chapter 32 of the Code that is determined to be an overpayment by reason of a price readjustment within the meaning of section 6416(b)(1) of the Code and § 53.174 or § 53.175, the person who paid the tax may file a claim for refund of the overpayment or may claim credit for the overpayment on any return of tax under this subpart which the person subsequently files. Price readjustments may not be anticipated. However, if the readjustment has actually been made before the return is filed for the period in which the sale was made, the tax to be reported in respect of the sale may, at the election of the taxpayer, be based either:

(a) On the price as so readjusted, or

(b) On the original sale price and a credit or refund claimed in respect of the price readjustment.

A price readjustment will be deemed to have been made at the time when the amount of the readjustment has been refunded to the vendor or the vendor has been informed that the vendor's account has been credited with the amount. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund, see 27 CFR 70.123 (Procedure and Administration), § 53.172(a)(2) and § 53.176. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(d) of the Code and § 53.185.

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF-312, 56 FR 31084, July 9, 1991]